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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 12th October, 1994/Asvina 20, 1916 (Saka)

THE INDUSTRIAL DEVELOPMENT BANK OF INDIA (AMENDMENT) ORDINANCE, 1994

No. 11 OF 1994

Promulgated by the President in the Forty-fifth Year of the
Republic of India.

An Ordinance further to amend the Industrial Development
Bank of India Act, 1964

WHEREAS Parliament is not in session and the President is satisfied
that circumstances exist which render it necessary for him to take immediate
action;

Now, THEREFORE, in exercise of the powers conferred by clause (1)
of article 123 of the Constitution, the President is pleased to promulgate the
following Ordinance:—

1. (1) This Ordinance may be called the Industrial Development Bank
of India (Amendment) Ordinance, 1994.

(2) It shall come into force at once.

2. In section 2 of the Industrial Development Bank of India Act, 1964
(hereinafter referred to as the principal Act). for clause (d), the follow-
ing clause shall be substituted, namely:—

Short
title
and
com-
mence-
ment.
Amend-
ment of
section 2.

“(d) “Industrial Finance Corporation” means the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956.”;

1 of 1956,

Substitution of section 4.

3. For section 4 of the principal Act, the following section shall be substituted, namely:—

Authorised capital.

“4. (1) The authorised capital of the Development Bank shall be two thousand crores of rupees divided into one hundred and fifty crores fully paid-up equity shares of rupees ten each and, subject to provisions of section 4E, fifty crores of fully paid-up redeemable preference shares of rupees ten each.

(2) The Development Bank may, from time to time, by a resolution in general meeting, increase the authorised capital to an amount not exceeding five thousand crores of rupees consisting of such number of equity shares and redeemable preference shares as it deems fit.

Amendment of section 4A.

4. In section 4A of the principal Act, sub-section (2) shall be omitted.

Insertion of new sections 4C, 4D and 4E.

5. After section 4B of the principal Act, the following sections shall be inserted, namely:—

Issued Capital

“4C. (1) The issued capital of the Development Bank of seven hundred and fifty three crores of rupees which stands fully vested in and subscribed by the Central Government immediately before the commencement of the Industrial Development Bank of India (Amendment) Ordinance, 1994 shall, on such commencement stand divided into seventy five crores and thirty lakhs equity shares of rupees ten each.

(2) The Board may, from time to time, increase the issued equity share capital of the Development Bank by allotment of shares to such persons and on such terms and conditions as the Board may determine:

Provided that no increase in the issued equity capital shall be made in such a manner that the Central Government holds at any time less than fifty-one per cent. of the issued equity capital of the Development Bank.

Reduction of share capital.

4D. (1) The Development Bank may, by a resolution passed in a general meeting of the shareholders, reduce its share capital in any way.

(2) Without prejudice to the generality of the foregoing power, the share capital may be reduced by,—

(a) extinguishing for reducing the liability on any of its equity shares in respect of share capital not paid up;

(b) either with or without extinguishing or reducing liability on any of its equity shares, cancelling any paid up share capital which is lost, or is unrepresented by available assets; or

(c) either with or without extinguishing or reducing liability on any of its equity shares, paying off any paid up share capital which is in excess of the wants of the Development Bank.

(3) In any general meeting referred to in sub-section (1), the resolution for reduction of share capital shall be passed by shareholders entitled to vote, voting in person, or, where proxies are allowed, by proxy, and the votes cast in favour of the resolution are not less than three times the number of the votes, if any, cast against the resolution by shareholders so entitled and voting.

4E. (1) The Central Government may, at any time after the commencement of the Industrial Development Bank of India (Amendment) Ordinance, 1994 by notification in the Official Gazette, convert such number of equity shares held by it not exceeding fifty crores as it may decide into redeemable preference shares.

Conversion of equity shares into redeemable preference shares.

(2) The redeemable preference shares referred to in sub-section (1) shall—

(a) carry such fixed rate of dividend as the Central Government may specify at the time of such conversion, and

(b) neither be transferable nor carry any voting rights.

(3) The redeemable preference shares referred to in sub-section (1) shall be redeemed by the Development Bank within three years from the date of such conversion in such instalments and in such manner as the Board may determine.”

5. In section 5 of the principal Act,—

(a) for sub-sections (1) and (2), the following shall be substituted, namely:—

Amendment of section 5.

“(1) The general superintendence, direction and management of the affairs and business of the Development Bank shall vest in a Board of Directors which may exercise all powers and do all such acts and things, as may be exercised or done by the Development Bank and are not by this Act expressly directed or required to be done by the Development Bank in general meeting.

(2) The Board may direct that any power exercisable by it under this Act shall also be exercisable in such cases and subject to such conditions, if any, as may be specified by it, by the chairman, managing director or the whole-time director.”;

(b) sub-section (4) shall be omitted.

6. In section 6 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

Amendment of section 6.

“(1) The Board shall consist of the following, namely:—

(a) a chairman and a managing director appointed by the Central Government;

Provided that the same person may be appointed to function both as chairman and as managing director;

(b) one whole-time director appointed by the Central Government on the recommendation of the Board;

(c) two directors who shall be officials of the Central Government nominated by the Central Government;

(d) three directors from amongst persons having special knowledge of, and professional experience in, science, technology, economics, industry, banking, industrial cooperatives, law industrial finance, investment, accountancy, marketing or any other matter, the special knowledge of, and professional experience in, which would, in the opinion of the Central Government, be useful to the Development Bank, nominated by the Central Government; and

(e) such number of directors elected, in the prescribed manner, by shareholders other than the Central Government, whose names are entered on the register of shareholders of the Development Bank ninety days before the date of the meeting in which such election takes place on the following basis, namely:—

(i) where the total amount of equity share capital issued to such shareholders is ten per cent. or less of the total issued equity capital, two directors;

(ii) where the total amount of equity share capital issued to such shareholders is more than ten per cent. but less than twenty-five per cent. of the total issued equity capital, three directors; and

(iii) where the total equity share capital issued to such shareholders is twenty five per cent. or more of the total issued equity capital, four directors;

Provided that until the assumption of charge by the elected directors under clause (e), the Central Government may at anytime nominate such number of directors, not exceeding four, from amongst persons having special knowledge of, and professional experience in, science, technology, economics, industry, banking, industrial cooperatives, law, industrial finance, investment, accountancy, marketing or any other matter, the special knowledge of, and professional experience in, which would, in the opinion of the Central Government, be useful to the Development Bank for carrying out its functions.”;

(b) in sub-sections (2) and (3), for the words “the chairman and the managing director”, the words “the chairman, the managing director and the whole-time director” shall be substituted;

(c) in sub-sections (2A) and (3A), for the words “the chairman or the managing director” wherever they occur, the words “the chair-

man, the managing director or the whole-time director" shall be substituted;

(d) for sub-section (4A), the following sub-section shall be substituted, namely:—

"(4A) Subject to the provisions of sub-section (4),—

(a) every director nominated under clause (d) of sub-section (1) shall hold office for such term not exceeding three years as the Central Government may specify in this behalf and thereafter until his successor assumes office, and shall be eligible for re-nomination;

Provided that no such director shall hold office continuously for a period exceeding six years; and

(b) every director elected under clause (e) of sub-section (1) shall hold office for such term not exceeding until his successor assumes office, and shall be eligible for re-election;

Provided further that no such director shall hold office continuously for a period exceeding six years;"

(e) after sub-section (4A), the following sub-section shall be inserted, namely:—

"(4B) The shareholders other than the Central Government, may, after giving to the director a reasonable opportunity of being heard in the manner as may be prescribed, by resolution passed by majority of the votes of such shareholders holding in the aggregate not less than one-half of the share capital held by such shareholders, remove any director elected under clause (e) of sub-section (1) and elect another director in his place to fill the vacancy so caused.";

(f) for sub-section (5), the following shall be substituted, namely:—

"(5) (i) A meeting of the Board shall be held at least once every three months and atleast four meetings shall be held every year and the meetings may be held at such places as may be prescribed;

(ii) Notice of every meeting of the Board shall be given in writing to every director for the time being in India, and at his usual address in India to every other director.

(5A) Subject to the provisions contained in this Chapter, the Board may meet at such times and places and shall observe such rules of procedure in regard to transaction of its business including the manner of adoption of resolutions as may be prescribed".

7. Section 6A of the principal Act shall be omitted.

Omission of section 6A.

Insertion
of new
sections
6B and
6C.

8. After section 6A of the principal Act, the following sections shall be inserted, namely:—

Disquali-
fications
of dir-
ectors.

“6B. (1) A person shall not be eligible for being elected director under clause (e) of sub-section (1) of section 6, if he—

- (a) has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;
- (b) is an undischarged insolvent;
- (c) has applied to be adjudicated as an insolvent and his application is pending;
- (d) has been convicted by a court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence; or
- (e) has not paid any call in respect of shares of the Development Bank held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call.

Vacation
of office
by direc-
tor.

6C. (1) The office of a director shall become vacant if he—

- (a) becomes subject to any of the disqualifications mentioned in section 6B; or
- (b) resigns his office by giving notice in writing under his hand and the resignation is accepted; or
- (c) absents himself from three consecutive meetings of the Board without obtaining leave of absence from the Board.

(2) Notwithstanding anything in clause (a) of sub-section (1), the disqualifications referred to in that clause shall not take effect—

- (a) for thirty days from the date of the adjudication, sentence or order;
- (b) where any appeal or petition is preferred within thirty days aforesaid against the adjudication, sentence or conviction resulting in the sentence or order until the expiry of seven days from the date on which such appeal or petition is disposed of; or
- (c) where within the seven days aforesaid, any further appeal or petition is preferred in respect of the adjudication, sentence, conviction or order and the appeal or petition, if allowed, would result in the removal of the disqualification, until such further appeal or petition is disposed of.”.

Amend-
ment of
section
7.

9. In section 7 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The Board shall constitute an Executive Committee consisting of the chairman, the Managing Director, whole-time director and such other directors as it may deem fit.”.

10. In section 8 of the principal Act, for the proviso, the following proviso shall be substituted, namely:—

Amend-
ment of
section
8.

“Provided that no fees shall be payable to the chairman, if he is appointed whole-time, or to the managing director or to the whole-time director or to any other director who is an official of the Government.”

11. In section 9 of the principal Act, in sub-section (1), in clauses (a), (c), (ca), (f) and (g), for the words “which may be notified by the Central Government in this behalf”, wherever they occur, the words “which may be approved by the Board in this behalf” shall be substituted.

Amend-
ment of
section
9.

12. In section 11 of the principal Act, in sub-section (1),—

Amend-
ment of
section
11.

(a) in clause (c), for the words “the Central Government”, the words “the Board” shall be substituted;

(b) for clause (d), the following clause shall be substituted, namely:—

“(d) accept deposit on such terms as may be approved by the Board.”.

13. In section 12 of the principal Act, sub-section (3) and (4) shall be omitted.

Amend-
ment of
section
12.

14. After section 13 of the principal Act, the following shall be inserted, namely:—

Insertion
of new
Chapters
IV-A and
IV-B.

“CHAPTER IV-A

SHARES

13A. (1) Save as otherwise provided in sub-section (2), the equity shares of the Development Bank shall be freely transferable.

Free
trans-
ferability
of
shares.

(2) Nothing contained in sub-section (1) shall entitle the Central Government to transfer any shares held by it in the Development Bank if such transfer will result in reducing the equity shares held by it to less than fifty-one per cent. of the issued equity capital of the Development Bank.

13B. (1) The Development Bank shall keep at its head office a register, in one or more books, of the shareholders and shall enter therein the following particulars so far as they may be available:—

Register
of
share-
holders.

(i) the names, addresses and occupations, if any, of the shareholders and a statement of the shares held by each shareholder, distinguishing each share by its denoting number;

(ii) the date on which each person is so entered as a shareholder;

(iii) the date on which any person ceases to be a shareholder; and

(iv) such other particulars as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the Development Bank to keep the register of the shareholders in computer floppies or diskettes subject to such safeguards as may be prescribed.

(3) Notwithstanding anything contained in the Indian Evidence Act, 1872, a copy of, or extract from, the register of shareholders, certified to be a true copy under the hand of an officer of the Development Bank authorised in this behalf, shall, in all legal proceedings, be admissible in evidence.

1 of 1872.

Trust
not to be
entered
on the
register
of share-
holders.

13C. Notwithstanding anything contained in section 13B, no notice of any trust, express, implied or constructive, shall be entered on the register of shareholders or be receivable by the Development Bank.

Board's
right to
refuse
registra-
tion of
transfer of
shares.

13D. (1) The Board may refuse to register the transfer of any shares in the name of the transferee on any one or more of the following grounds, and on no other ground, namely:—

(a) the transfer of the shares is in contravention of the provisions of this Act or regulations made thereunder or any other law;

(b) the transfer of the shares, in the opinion of the Board, is prejudicial to the interests of the Development Bank or to the public interest;

(c) the transfer of shares is prohibited by an order of a court, tribunal or any other authority under any law for the time being in force.

(2) The Board shall, before the expiry of two months from the date on which the instrument of transfer of shares of Development Bank is lodged with it for the purpose of registration of such transfer, not only form, in good faith, its opinion as to whether such registration ought not or ought to be refused on any of the grounds referred to in sub-section (1) but also,—

(a) if it has formed the opinion that such registration ought not be so refused, effect such registration; and

(b) if it has formed the opinion that such registration ought to be refused on any of the grounds mentioned in sub-section (1), intimate the transferor and the transferee by notice in writing.

(3) An appeal against the order or refusal of the Board under sub-section (2) shall lie to the Central Government and the procedure for filing and hearing of such appeal shall be in accordance with the rules made by the Central Government in this behalf.

Shares
to be
securities
under
Indian
Trusts
Act, 1882.

13E. Notwithstanding anything contained in the Indian Trusts Act, 1882, the shares of the Development Bank shall be deemed to be included among the securities enumerated in section 20 of the said Act.

2 of 1882.

CHAPTER IV-B

MEETINGS AND PROCEEDINGS

13F. (1) The Development Bank shall in each year hold, in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting and that of the next:

Annual
general
meeting.

Provided that the Development Bank may hold the first annual general meeting within a period of six months from the date on which it allots shares for the first time to public for subscription:

Provided further that the Central Government may extend the time within which any annual general meeting shall be held by a period not exceeding three months.

(2) Every annual general meeting shall be called for a time during business hours, on a day that is not a public holiday, and shall be held either at head office or at some other place within the city or town in which the head office is situate.

Explanation.—For the purposes of this section, “public holiday” means a public holiday within the meaning of the Negotiable Instruments Act, 1881:

26 of 1881.

Provided that no Sunday shall be deemed to be such a holiday in relation to any meeting:

Provided further that no day declared by the Central Government to be a public holiday shall be deemed to be such a holiday, in relation to any meeting, unless the declaration was notified before the issue of the notice convening such meeting.

13G. Every shareholder of the Development Bank holding equity shares shall have a right to vote in respect of such shares on every resolution and his voting right on a poll shall be in proportion to his share of the paid up equity capital of the Development Bank:

Restric-
tion on
exercis-
ing of
voting
right.

Provided however, that no shareholder, other than the Central Government shall be entitled to exercise voting rights in respect of any equity shares held by him in excess of ten per cent. of the issued equity capital.

13H.(1) The shareholders present at an annual general meeting shall be entitled to discuss and adopt—

(a) the balance sheet and profit and loss account of the Development Bank made up to the date on which its accounts are closed and balanced;

(b) the report of working of the Development Bank for the period covered by the accounts;

(c) the auditor's report on the balance sheet and accounts:

Matters
to be
discus-
sed and
proce-
dure in
annual
general
meeting.

(d) proposals for declaration of dividend and capitalisation of reserves.

(2) The share-holders present at an annual general meeting may also discuss any other matter to be transacted at such meetings in accordance with the provisions of this Act.

(3) The matters relating to—

(a) the manner in which annual general meeting or other meetings are held under this Act and the procedure to be followed thereat;

(b) the manner in which voting rights may be exercised and resolutions may be passed; and

(c) the procedure for transaction of business at such meetings and related matters,

shall be as may be prescribed."

Amendment of section 18.

15. In section 18 of the principal Act, in sub-section (3), for the words "Central Government", the words "Development Bank" shall be substituted.

Amendment of section 22.

16. In section 22 of the principal Act, in sub-section (2), the following sub-section shall be substituted, namely:—

"(2) After making provision for bad and doubtful debts, depreciation of asset and for all other matters for which provision is necessary or expedient or which is usually provided for by bankers and for the reserve fund referred to in sub-section (1), and after transferring a part of the profits to such other reserves or funds as may be considered appropriate, the Board may, out of its net profits, declare a dividend."

Amendment of section 23.

17. (1) In section 23 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The accounts of the Development Bank shall be audited by auditors duly qualified to act as auditors under sub-section (1) of section 226 of the Companies Act, 1956 who shall be appointed by the Development Bank in general meeting of the shareholders out of the panel of auditors approved by the Reserve Bank for such term and on such remuneration as the Reserve Bank may fix."

(b) in sub-section (5), for the words "within four months from the date on which its accounts are closed and balanced", the words "within one month from the date on which the annual general meeting is held" shall be substituted.

Insertion of new section 32A.

18. After section 32 of the principal Act, the following section shall be inserted, namely:—

Nomination in respect of deposits bonds, etc.

"32A. (1) Notwithstanding anything contained in any other law for the time being in force, where a nomination in respect of any deposits, bonds or other securities is made in the prescribed manner, the amount due on such deposits, bonds or securities shall, on the death of the depositor or holder thereof, vest in, and be payable to, the nominee sub-

1 of 1956.

ject to any right, title or interest of any other person to such deposits, bonds or securities.

(2) Any payment by the Development Bank in accordance with the provisions of sub-section (1) shall constitute a full discharge to the Development Bank of its liability in respect of such deposits, bonds or securities.”.

19. In section 37 of the principal Act,—

(a) in sub-section (2),—

(i) in clause (a), the words “and the manner of adoption of resolutions” shall be inserted at the end;

(ii) after clause (da), the following clauses shall be inserted, namely:—

“(db) the manner in which and the conditions subject to which shares may be held and transferred;

(dc) matters relating to the rights of shareholders;

(dd) the maintenance of share registers and the particulars to be entered therein;

(de) the safeguards to be observed in the maintenance of register of shareholders on computer floppies or diskettes;

(df) the inspection and closure of the registers and all other matters connected therewith;

(dg) the holding and conduct of elections of directors under this Act and the determination of disputes regarding the qualification of directors;

(dh) the manner in which general meetings shall be convened, the procedure to be followed thereat, the manner in which voting rights may be exercised, resolutions passed and business transacted in such meetings and other matters relating to meetings;

(di) the manner in which notices may be served on shareholders or other persons;

(dj) the manner in which nomination may be made in terms of section 32A;”;

(b) for sub-section (4), the following shall be substituted, namely:—

“(4) Every regulation or rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or rule

Amendment of section 37.

or both Houses agree that the regulation or rule should not be made, the regulation or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation or rule.”.

SHANKER DAYAL SHARMA,

President.

A. C. C. UNNI,
Additional Secretary to the Govt. of India.